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COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.

NOV 10 2003

GENERAL COUNSEL  
OF COPYRIGHT

In the Matter of

DIGITAL PERFORMANCE RIGHT IN  
SOUND RECORDINGS AND  
EPHEMERAL RECORDINGS

Docket No. 2002-1 CARP DTRA 3  
Docket No. 2001-2 CARP DTNSRA

**SOUNDEXCHANGE MOTION TO  
COMPEL DISCOVERY PRODUCTION FROM RLI**

SoundExchange, Inc. ("SoundExchange") hereby moves to compel Royalty Logic, Inc. ("RLI") to produce documents in response to discovery requests. Thus far, RLI has *not produced a single document* in the discovery process for the above-captioned matters. SoundExchange asks the Copyright Office ("Office") to order RLI to comply with the requirements of the discovery process and to produce documents, and, if RLI fails to comply fully with the Office's Order, to strike RLI's direct case from the record of the proceeding.<sup>1</sup> In addition, the Office should make it clear that RLI may not introduce documents that it has failed to produce in discovery to support its case during any part of the upcoming proceeding.

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<sup>1</sup> SoundExchange already has moved to strike the opening brief from RLI's direct case. *See* Motion to Strike Material from RLI Direct Case (October 17, 2003). If that request is not granted, SoundExchange has reserved the right to make discovery requests related to statements in the opening brief. If RLI fails to comply with any such requests, SoundExchange could be forced to file an additional motion to compel.

**1. RLI Has Failed to Produce Any Documents in Discovery.**

37 C.F.R. § 251.45(c) provides that parties must produce “nonprivileged underlying documents related to the written exhibits and testimony.” Thus far, despite repeated requests from SoundExchange to produce documents that appear from the face of RLI’s direct case to underlie the testimony of its witnesses,<sup>2</sup> RLI has failed to produce a single page of a single document in response to SoundExchange’s discovery requests.<sup>3</sup> It strains credulity to suggest that RLI, whose founder is an experienced businessperson operating a sister business administering over \$50 million or \$100 million in annual royalties (as indicated in the discussion below, both claims are made in the RLI direct case), is seeking appointment as a Designated Agent to provide complex royalty collection and distribution services, yet claims that it does not have *a single document* underlying its direct case.<sup>4</sup>

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<sup>2</sup> In compliance with the Office’s procedural schedule, SoundExchange served its initial discovery requests for the production of underlying documents (attached at Tab A) on RLI on October 17, 2003. RLI responded to those requests on October 23, 2003 (attached at Tab B), and consistent with its responses failed to turn over any documents by the deadline of October 28, 2003, despite the fact that SoundExchange turned over an array of underlying documents. On October 31, 2003, SoundExchange propounded its follow-up requests for the production of underlying documents (attached at Tab C), and RLI responded to those requests on November 5, 2003 (attached at Tab D), indicating that it would produce documents in response to only one of the follow-up requests.

<sup>3</sup> RLI indicated in response to SoundExchange’s follow-up requests (attached at Tab D) that it would produce documents responsive to a single request. That response was not made to the initial request, which covered the exact same language in the RLI direct case, and responsive documents were not produced on October 28 as required by the Office’s Order of September 24, 2003. Thus, SoundExchange has not yet seen the documents, which will purportedly be produced on November 14. SoundExchange reserves the right both to make follow-up requests related to any documents produced for the first time on November 14, and to file a motion to compel production of additional documents should that turn out to be necessary.

<sup>4</sup> The only document that RLI has agreed to produce appears to relate to Music Choice, a third party, rather than RLI or Lester Chambers. *See* RLI Response to SoundExchange Follow-up Request 16 at Tab D, pages 5-6.

Given this general failure of RLI to comply with the Office's discovery procedures, SoundExchange asks that RLI be required to produce existing documents in response to all SoundExchange requests, and to identify any instances in which documents do not in fact exist. Although, as noted above, SoundExchange is requesting that RLI be required to respond to all of its requests, the following examples of RLI's failure to provide documents are particularly troubling in light of the issues in this case and the Office's past decisions regarding the necessity of producing underlying documents.

**A. RLI Failed to Produce Documents Demonstrating the Scope of Lester Chambers' Claim.**

This entire proceeding is premised upon an objection filed by Lester Chambers, who claims repeatedly to be a copyright owner of sound recordings that have been performed on webcasting and simulcasting services. *See* Order in Docket Nos. 2002-1 CARP DTRA 3 & 2001-2 CARP DTNSRA at 4 (August 18, 2003 (8-page order)). Yet RLI has failed entirely in its direct case to set forth the nature and particulars of the copyrighted sound recordings on which it bases its claim as the agent for Mr. Chambers.<sup>5</sup> When pressed to do so in repeated discovery requests directed to the testimony of Mr. Chambers and various accompanying exhibits, RLI responded that the statements were made based upon personal knowledge, and failed to provide any responsive documents. It is difficult to believe that RLI would bring this entire case without obtaining documentary information from Mr. Chambers ascertaining that

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<sup>5</sup> This is a fundamental premise on which the entire RLI case is based. In order to have standing to object to the terms of the settlement agreement appointing SoundExchange as the Designated Agent for the collection and distribution of royalties, Lester Chambers must be a copyright owner. *See* 17 U.S.C. § 114(f) (ability to license sound recordings is limited to copyright owners).

he indeed owns the copyrights to sound recordings, or that Mr. Chambers would have made his statements about “many” performances of his sound recordings without considering some documentation of the actual performance of his copyrighted sound recordings, and indeed RLI does not deny that such documents exist. If such documents exist, they must be produced.

The relevant follow-up requests and responses (included at Tab D), which incorporate the initial requests (found at Tab A), are set out below.

\* \* \*

**SoundExchange Follow-up Requests and Responses (Tab D):**

**Testimony of Lester Chambers**

1. Paragraph 2 (Initial Request No. 1): This request asked that you “provide all documents underlying the statement that Mr. Chambers is ‘a copyright owner of many sound recordings and a featured performer on many other sound recordings that have been performed by webcasters and other digital transmission services.’” It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers’ share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers’ share of artist royalties for each sound recording which he owns or on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were provided in response to this request. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and SoundExchange renews its request for the production of those documents.

**Response:** The scope of discovery in CARP proceedings is intended only to require the production of documents that underlie the witness’ actual statement, not to range beyond what the witness said or to encompass what the witness might have said. In this instance, the statement was made by Mr. Chambers upon his own personal knowledge and without reference to particular underlying documents. In any event, the documents produced by SoundExchange demonstrate that there are numerous public sources from which this information can separately be obtained. *See also* <http://www.lesterchambers.com>.

3. Paragraph 14 (Initial Request. No. 11): This request asked that you “provide all documents underlying the statement that Mr. Chambers is ‘a copyright owner of sound recordings and a featured performing artist on sound recordings that have been performed by webcasting and other digital transmission services.’” It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers’ share of ownership for each sound recording that has been performed which he owns or on which he is a featured performer, and Mr. Chambers’ share of artist royalties for each sound recording that has been performed which he owns or on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were

provided in response to this request. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and SoundExchange renews its request for the production of those documents.

**Response:** RLI incorporates by reference herein its response to Follow-Up Request 1.

4. Exhibit 1 (Initial Request No. 13): This request asked that you "provide all documents underlying the RLI-Performer Client Agreement between RLI and Lester Chambers." Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* the Agreement at Exhibit 1 of the testimony of Lester Chambers.

**Response:** There are no underlying documents other than the document itself.

6. Exhibit 1, Second Whereas Clause (Initial Request No. 15): This request asked that you "provide all documents underlying the statement that Mr. Chambers 'is now . . . a featured or non-featured performer on certain sound recordings and may now . . . own or control certain sound recordings.'" It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were provided in response to this request. Instead, your response indicates that the Agreement at Exhibit 1 underlies itself. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and SoundExchange renews its request for the production of those documents that *underlie* this statement.

**Response:** RLI incorporates herein by reference its response to Follow-Up Request 1.

9. Exhibit 1, Article 7 (Initial Request No. 18): This request asked that you "provide all documents underlying the statement that 'Client shall provide to RLI such accurate and timely information concerning Client's entitlement to royalties . . . including, without limitation, titles of sound recordings included in the Recordings, proof of rights with respect thereto, release dates, configuration types and royalty distribution information necessary to identify the correct Copyright Owner and Performer recipients for such payments,' including, without limitation, any such information that has been provided by Mr. Chambers to RLI." Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* Article 7 in the Agreement at Exhibit 1 of the testimony of Lester Chambers, including, without limitation, any such information that has been provided by Mr. Chambers to RLI.

**Response:** There are no underlying documents other than the document itself.

\* \* \*

As demonstrated by this lengthy series of requests and responses, there are multiple instances in which it appears from the testimony of Mr. Chambers that underlying documents exist, and that Mr. Chambers would have relied upon them as a basis for making the statements included in the testimony. The fact that he might not have looked at the documents at the very moment he was drafting or reviewing his testimony does not excuse him from the obligation of producing documents if they exist, or indicating if they do not exist. *See* Order in Docket No. 2000-9 CARP DTRA 1&2 at 7 (June 22, 2001) (“It does not follow . . . that a witness must specifically consult or rely upon a particular document in making a factual assertion before that document becomes discoverable.”), *quoting* Order in Docket No. 2000-2 CARP CD 93-97 at 4 (October 10, 2000).

For instance, Follow-up Request 1 (based on Initial Request 1) refers to documents underlying the assertion that Mr. Chambers owns the copyrights to “many sound recordings” that have been performed by webcasters and digital transmission services. It appears likely that this statement would be based on some sort of reporting of what was played on those services, yet nothing was produced. Follow-up Request 3 (based on Initial Request 11) is similar. Follow-up Request 4 (based on Initial Request 13) asks for all documents underlying the RLI-Performer Client Agreement between RLI and Lester Chambers, and Follow-up Requests 6 (Initial Request 15) and 9 (Initial Request 18) make requests based on specific provisions of that agreement. It seems highly unlikely that the agreement would have been accepted by RLI unless Lester Chambers provided RLI with some documentary proof of the sound recordings for which he believes he is entitled to royalties either as a copyright owner or as a performer, especially given the specific requirement contained in Article 7 (subject of Follow-up Request 9) for him to furnish information on “titles of sound recordings included in

the Recordings, proof of rights with respect thereto, release dates, configuration types and royalty distribution information necessary to identify the correct Copyright Owner and Performer recipients for such payments.” It seems improbable that no such information was ever provided to RLI by Mr. Chambers or one of his representatives before RLI commenced a proceeding based entirely on the standing of Mr. Chambers to make these claims. In addition, the information seems essential in order for RLI to operate a business based on administering royalty accounts and distributing royalties. If that information was provided to RLI, it should be provided to SoundExchange now.

The fact that Mr. Chambers is a copyright owner is a cornerstone of RLI’s case, which could not exist without it. Given the importance of this testimony to the proceeding, underlying documents must be produced. *See* Order in Docket No. 2001-8 CARP CD 98-99 at 5 (March 20, 2003) (because witness testimony is a “cornerstone” of direct case underlying data must be produced). SoundExchange should not be forced to expend any additional resources on this proceeding before it is provided with the necessary documents to verify that Mr. Chambers had a proper basis for convening the proceeding in the first place.

It is unavailing for RLI to state in its responses to SoundExchange’s requests that SoundExchange may not obtain documents that “range beyond what the witness said or [ ] encompass what the witness might have said.” SoundExchange requested neither of these things. Instead, it asked for documents that directly underlie statements that actually were made by Mr. Chambers or included in the exhibits to his testimony. The suggestion that SoundExchange could search for the information itself is also of no assistance to RLI. As the Office has stated on repeated occasions, if underlying documents exist, they must be produced even if the party requesting production could obtain the documents by other means. *See, e.g.,*

Order in 2000-9 CARP DTRA 1&2 at 4 (June 22, 2001) (“In a CARP proceeding, it is the responsibility of a party offering testimony to produce documents that underlie its witnesses’ factual assertions. . . . it is not acceptable to assert that a party requesting underlying documents already has them in its possession.”); Order in Docket No. 96-5 DSTRA at 8 (January 21, 1997) (“there is no ‘public domain’ exception to the obligation to produce documents that underlie a witness’s testimony”).<sup>6</sup>

**B. RLI Failed to Produce Documents in Support of Bottom-Line Numbers.**

Mr. Gertz makes two statements in his testimony and the accompanying exhibits about the amount of royalties collected from copyright licensees and administered by MRI, the sister company to RLI from which RLI will obtain a variety of services. As demonstrated in the requests and responses set forth below, at one point, he states that MRI administers more than \$50 million in royalties on an annual basis, while at another point, he states that MRI administers over \$100 million in music license royalties. Given the importance of RLI’s relationship to MRI in RLI’s case for being appointed a Designated Agent, facts about MRI are highly relevant to this proceeding.

The relevant requests are set forth below.

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<sup>6</sup> In any event, the website to which RLI referred SoundExchange for allegedly responsive information, [www.lesterchambers.com](http://www.lesterchambers.com), appears to contain neither information about the sound recordings in which Lester Chambers owns copyrights, nor information about the sound recordings for which Lester Chambers is a copyright owner or performer that have been performed by webcasters and simulcasters.



\* \* \*

**SoundExchange Follow-up Requests (included at Tab D):**

**Testimony of Ronald H. Gertz**

15. Paragraph 7 (Initial Request No. 29): This request asked you to “provide all documents underlying the statement that ‘MRI currently administers more than \$50 million in music licensing royalties annually, on behalf of record companies, digital distribution services and broadcasters in the U.S.’” Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which contains a bottom-line number. Please produce those underlying documents.

**Response:** The statement was made by Mr. Gertz upon his personal knowledge and information, and not by reference to underlying documents.

17. Rebuttal Testimony of Ron Gertz, Paragraph 4 (Initial Request No. 36): This request asked you to “provide all documents underlying the statement that ‘MRI currently administers over 100 million dollars per year in music license royalties.’” Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which contains a bottom-line number. Please produce those underlying documents.

**Response:** The statement was made by Mr. Gertz upon his personal knowledge and information, and not by reference to underlying documents.

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Both the \$50 million and \$100 million figures are bottom-line numbers – albeit apparently contradictory ones – that must be supported by underlying documents if those documents exist. *See* Order in Docket No. 2001-8 CARP CD 98-99 at 5-6 (March 20, 2003) (underlying documents must be provided in support of bottom-line figures included in witness testimony); *see also* Order in Docket No. 2000-9 CARP DTRA 1&2 at 3 (August 10, 2001); Order in Docket No. 93-4 CARP CD 90-92 at 2 (October 30, 1995). Mr. Gertz’s testimony as the only witness from RLI and one of its two principals is fundamental to RLI’s direct case. “The more significant a witness’ testimony is to a party’s case, the greater the need to verify the accuracy of the bottom-line numbers offered.” Order in Docket No. 2001-8 CARP CD 98-

99 at 6 (March 20, 2003), *citing* Order in Docket No. 2000-9 CARP DTRA 1&2 at 7 (June 22, 2001).

RLI's response that Mr. Gertz made the statements based upon personal knowledge without reference to underlying documents is not adequate to shield those documents from production if they exist. It is inconceivable that a sophisticated, established business that collects and administers over \$50 million – or \$100 million – in annual royalties from licensees has no written documentation of such an important financial fact. Whether or not he looked at them at the very moment when he drafted his testimony, such documents clearly underlie the statements made by Mr. Gertz, and SoundExchange is entitled to see them in order to verify the numbers Mr. Gertz quotes in his testimony. The usual concern about the ability to verify numbers is exacerbated here where the numbers on their face appear to be contradictory.

**C. RLI Failed to Produce an Agreement Described in the Testimony.**

In the testimony of Mr. Gertz, RLI refers specifically to a long-term licensing relationship between MRI and RLI for “critical database and data processing activities,” yet failed to provide a copy of the underlying agreement in response to SoundExchange's discovery request. It seems highly unlikely that an agreement so central to RLI's operation, where the other party administers \$50 or \$100 million in royalties on an annual basis, would not be reduced to writing, and indeed RLI does not deny that an agreement exists.

The relevant follow-up request and response are set forth below.

\* \* \*

**SoundExchange Follow-up Requests (included at Attachment D):**

**Testimony of Ronald H. Gertz**

14. Paragraph 7 (Initial Request No. 27): This request asked that you “provide all documents underlying the statement that ‘RLI enjoys a long-term licensing relationship with MRI for certain critical database and data processing activities,’ including, but not limited to, any licensing agreements between RLI and MRI.” Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which strongly suggests the existence of licensing agreements between RLI and MRI for certain database and data processing activities. Please produce those agreements and any other underlying documents.

**Response:** The statement was made solely upon direct personal knowledge, without reference to any underlying document.

\* \* \*

RLI’s response, which does not deny the existence of the agreement but states that Mr. Gertz did not refer to it in making the statement, does not relieve RLI of the responsibility for producing the document that underlies the statement. *See* Order in Docket No. 2000-9 CARP DTRA 1&2 at 7 (June 22, 2001) (“It does not follow . . . that a witness must specifically consult or rely upon a particular document in making a factual assertion before that document becomes discoverable.”) Of course Mr. Gertz did not need to look at the document again in order to make the statement – he is one of only two principals of both of the companies and would have seen the agreement at an earlier point in time, or even been involved in preparing it. That does not mean, however, that he can use his previous knowledge as a way to avoid the production of underlying documents. Just as it is entitled to verify bottom-line numbers, SoundExchange is entitled to verify the existence and terms of the agreement described by Mr.

Gertz, which clearly underlies his statement describing the subject matter of the agreement.<sup>7</sup>

As explained above, this principle is especially important here, where Mr. Gertz's testimony is so central to RLI's case.

**2. RLI Should Be Compelled to Produce Documents or Its Direct Case Should Be Stricken from the Record of the Proceeding.**

RLI should not be permitted to hide behind the alleged failure of its witnesses to review any documents during the actual preparation of their testimony in order to escape any meaningful production of underlying documents. That tactic would go clearly against the purpose of the discovery regulations, which attempt to narrow the issues between the parties and limit the scope of cross-examination by permitting the production of documents that underlie the testimony. The regulations are not designed as a device to allow parties to avoid verification of the statements made in the written testimony of the witnesses. It defies credulity to suggest that *not a single document* underlies the extensive testimony and exhibits contained in RLI's direct case. RLI should be compelled to produce responsive underlying documents, or to declare in applicable situations that such documents do not exist. *See* Order in Docket No. 2000-2 CARP CD 93-97 at 4 (October 10, 2000) ("If responsive documents do not exist, it is the responsibility of the responding party to so state at the time period established in the discovery schedule for responses.")

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<sup>7</sup> Under the theory asserted by RLI, SoundExchange could have produced few or no documents underlying the testimony of Mr. Simson and Ms. Kessler, both of whom are familiar with the operations of SoundExchange and could provide testimony without consulting any documents.

If RLI fails once again to comply with the requirements of the discovery process, its direct case should be stricken from the record of this proceeding. The Copyright Office has said repeatedly that striking material from the record is the appropriate remedy for failure to produce underlying documents. *See, e.g.*, Order in Docket No. 2000-2 CARP CD 93-97 at 4 (October 10, 2000) (testimony should be stricken from case if it is revealed after discovery period that responsive documents exist). In a case such as this one, where a party that is the sole proponent of the proceeding has produced no documents at all and it is apparent on the face of the direct case that documents exist, there is no need to wait and have the CARP hear the oral testimony in order to determine whether striking the written testimony is warranted. If RLI fails again to produce documents, its direct case should be stricken immediately in order to minimize the additional time and costs that SoundExchange will have to devote to this proceeding.

In no event should RLI be permitted to introduce into evidence later in the proceeding underlying documents that it has failed to produce in response to SoundExchange's requests during the discovery period. Thus, if the Office is for some reason unable to compel RLI to produce documents, and RLI's direct case is not stricken immediately, RLI should be precluded from introducing evidence to demonstrate Mr. Chambers' interest in sound recordings as either a copyright owner or performer, or documentary evidence demonstrating the benefits that RLI will gain from its relationship with MRI. The record will be devoid of documentary evidence on these and all other subjects covered by the discovery requests.

37 C.F.R. § 251.45(c)(2) provides that all issues involving failure to produce underlying documents that are apparent from the face of a written case must be raised during the motions period or the party objecting may be precluded from raising such an objection

later in the proceeding. Conversely, if despite repeated requests a party fails to produce underlying documents during the discovery period, that party should be precluded from producing such documents later in the proceeding. *See* Order in Docket No. 2000-2 CARP CD 93-97 at 2 (“[I]f at a future date . . . it is revealed that there are documents supporting [the] statement, [the party that failed to produce them] is precluded from introducing those documents into the record of this proceeding.”) Otherwise parties will have a motive to withhold documents during the discovery phase of a proceeding and wait until the hearings, when further discovery is difficult or impossible, to reveal the existence of underlying documents and introduce them into evidence. The mere possibility of proceeding in this manner should be strongly discouraged by preventing parties from introducing any documents that were withheld during the discovery period.

### Conclusion

RLI has once again failed to comply with the rules established by the Office for the orderly conduct of CARP proceedings. RLI should be ordered to produce documents in response to SoundExchange's discovery requests forthwith. Should it fail to do so, RLI's direct case should be stricken from the record of this proceeding. In no event should RLI be permitted to introduce into evidence later in the proceeding underlying documents that it has failed to produce to SoundExchange during the discovery period.

Respectfully submitted,

By:



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*Counsel for SoundExchange, Inc.*

November 10, 2003

**CERTIFICATE OF SERVICE**  
**Docket No. 2002-1 CARP DTRA3**  
**Docket No. 2001-2 CARP DTNSRA**

I hereby certify that a copy of the foregoing SoundExchange Motion to Compel  
Discovery Production from RLI was sent on November 10, 2003, by overnight delivery,  
to the following party:

Seth Greenstein  
McDermott, Will & Emery  
600 Thirteenth Street, N.W.  
Washington, DC 20005-3096

  
\_\_\_\_\_  
Daniel Lee



# ARNOLD & PORTER

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October 17, 2003

## BY ELECTRONIC MAIL AND OVERNIGHT MAIL

Seth D. Greenstein, Esquire  
McDERMOTT, WILL & EMERY  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096

Re: Digital Performance Right in Sound Recordings and Ephemeral  
Recordings  
Docket Nos. 2002-1 CARP DTRA 3 & 2000-2 CARP DTNSRA

Dear Seth:

Pursuant to Section 251.45(c) of the rules of the Copyright Office, 37 C.F.R. § 251.45(c), we hereby request that you provide the following underlying documents related to the testimony that you have submitted on behalf of RLI and Lester Chambers in the above-referenced proceeding.

Please repeat on your response each of the requests below; we have provided you with an electronic copy of these requests. Please provide a separate written response to each request. If you object to any request, state each basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to a portion of the request that is not objectionable. If you claim a document is "privileged," please state every fact supporting your claim of privilege. The term "underlying" has the same meaning as in Section 251.45(c) of the Copyright Office rules, 37 C.F.R. § 251.45(c), and includes, without limitation, all documents upon which the witness relied in making his or her statement and all documents which verify bottom-line numbers.

The term "document" includes any kind of printed, recorded, written, graphic, or photographic matter (including tape recordings or computer tapes or disks) of any kind or description, including information in an electronic form such as a computer database or web page. For the purposes of these requests, the terms "including", "includes" and "such as" are illustrative and not limitative.

In accordance with the procedural schedule issued by the Copyright Office on September 24, 2003, we expect to receive your responses to these requests by October 23, 2003. Please indicate on all documents produced the particular requests to which they are responsive. We reserve the right to supplement these requests if our motion to strike Tab 1 of RLI's direct case is not granted.

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# ARNOLD & PORTER

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Seth D. Greenstein, Esquire

October 17, 2003

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## Testimony of Lester Chambers

1. Paragraph 2: Please provide all documents underlying the statement that Mr. Chambers is "a copyright owner of many sound recordings and a featured performer on many other sound recordings that have been performed by webcasters and other digital transmission services," including, without limitation, the titles, labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording which he owns or on which he is a featured performer.

2. Paragraph 5: Please provide all documents underlying the statement that Mr. Chambers has not received royalties from digital performances of sound recordings "due in part to significant problems SoundExchange has encountered related to the administration of statutory license payments."

3. Paragraph 6: Please provide all documents underlying the statement that Mr. Chambers has appointed RLI as his agent to obtain royalties due under statutory licenses.

4. Paragraph 6: Please provide all documents underlying the statement that "other sound recording copyright owners and performers have designated RLI to administer their royalties."

5. Paragraph 7: Please provide all documents underlying Mr. Chambers' statement that "RLI is authorized by me to collect statutory royalties on my behalf and represent me in direct and voluntary licensing transactions with webcasters and other transmission services."

6. Paragraph 7: Please provide all documents underlying Mr. Chambers' statement that "I am not now or [sic] ever have been represented by SoundExchange . . . ."

7. Paragraph 8: Please provide all documents underlying the statement that "RLI is capable of performing these functions, will operate efficiently, will pay me in a timely and accurate manner, and will better represent my interests as a copyright owner and performing artist."

8. Paragraph 8: Please provide all documents underlying the statement that "the costs incurred by SoundExchange have been extremely and unnecessarily high and represent the interests of the major record labels rather than the interests of small copyright owners and performers."

9. Paragraph 11: Please provide all documents underlying the statement that using "multiple agents . . . will create an expensive and burdensome administrative effort."

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# ARNOLD & PORTER

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Seth D. Greenstein, Esquire

October 17, 2003

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10. Paragraph 13: Please provide all documents underlying the statement that having all royalty payments made to SoundExchange "presents too many opportunities for self-dealing."

11. Paragraph 14: Please provide all documents underlying the statement that Mr. Chambers is "a copyright owner of sound recordings and a featured performing artist on sound recordings that have been performed by webcasting and other digital transmission services," including, without limitation, the titles, labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording which he owns or on which he is a featured performer.

12. Paragraph 15: Please provide all documents underlying the statement that competition among Designated Agents "can only result in lower costs and more efficient operating and distribution practices by the competing Designated Agents."

13. Exhibit 1: Please provide all documents underlying the RLI-Performer Client Agreement between RLI and Lester Chambers.

14. Exhibit 1, First Whereas Clause: Please provide all documents underlying the statement that RLI "negotiates licenses and agrees to royalty rates and terms and conditions for the performance of sound recordings and the making of certain ephemeral recordings."

15. Exhibit 1, Second Whereas Clause: Please provide all documents underlying the statement that Mr. Chambers "is now . . . a featured or non-featured performer on certain sound recordings and may now . . . own or control certain sound recordings," including, without limitation, the titles, labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording which he owns or on which he is a featured performer.

16. Exhibit 1, Article 4.1.2: Please provide all documents underlying the statement that "Client's share shall be calculated by RLI based on a survey of music performances derived from information provided by licensees pursuant to copyright office regulations governing records of use of sound recordings, and such other information as RLI may deem relevant, pursuant to RLI's then current accounting and distribution practices . . . ."

17. Exhibit 1, Article 4.2: Please provide all documents underlying the statement that "RLI may deduct from any of its receipts . . . a reasonable charge for administration."

18. Exhibit 1, Article 7: Please provide all documents underlying the statement that "Client shall provide to RLI such accurate and timely information concerning Client's entitlement to royalties . . . including, without limitation, titles of sound recordings included in the Recordings, proof of rights with respect thereto, release dates, configuration types and

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# ARNOLD & PORTER

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Seth D. Greenstein, Esquire

October 17, 2003

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royalty distribution information necessary to identify the correct Copyright Owner and Performer recipients for such payments," including, without limitation, any such information that has been provided by Mr. Chambers to RLI.

19. Exhibit 2: Please provide all documents underlying the Notice included in this exhibit, including, without limitation, any documents demonstrating the interest of Lester Chambers in the litigation that is the subject of the Notice, and any Proof of Claim and Release (see Attachment B) filed by Lester Chambers.

## Testimony of Ronald H. Gertz

20. Paragraph 4: Please provide all documents underlying the statement that "RLI is an independent music copyright management organization established to provide a fair return to sound recording copyright owners and performers for the licensing of their recordings in digital media."

21. Paragraph 4: Please provide all documents underlying the statement that "RLI's mission is to maximize license fee collections and royalty distributions on behalf of our affiliates, and to distribute such fees promptly and efficiently, at the lowest possible cost to our affiliates," including, without limitation, schedules for any royalty distributions and the costs of those distributions.

22. Paragraph 6: Please provide all documents underlying the statement that RLI has "representation agreements with sound recording copyright owners who have appointed RLI as their agent to collect and distribute their royalties from both voluntary license agreements and transmissions authorized pursuant to the statutory licenses," including, but not limited to, copies of all such representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits.

23. Paragraph 6: Please provide all documents underlying the statement that "RLI currently represents numerous copyright owners and performers whose works and performances have been performed by all statutory licensees including pre-existing subscription services, satellite digital audio radio services and eligible non-subscription and subscription webcasting services," including, but not limited to, a list of those owners and performers and copies of all such representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits.

24. Paragraph 6: Please provide all documents underlying the statement that RLI affiliates are copyright owners of recorded performances by the performers listed in this paragraph, including, but not limited to, copies of all affiliation or representation agreements to

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# ARNOLD & PORTER

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Seth D. Greenstein, Esquire

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the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits.

25. Paragraph 6: Please provide all documents underlying the statement that Mr. Gertz has had "conversations with many copyright owners, artists and their representatives regarding affiliation with RLI following an extension of its Designated Agent status in this proceeding."

26. Paragraph 7: Please provide all documents underlying the statement that "RLI was created and is currently controlled by the principals of Music Reports, Inc. ("MRI")," including, but not limited to, information as to the identity of those principals.

27. Paragraph 7: Please provide all documents underlying the statement that "RLI enjoys a long-term licensing relationship with MRI for certain critical database and data processing activities," including, but not limited to, any licensing agreements between RLI and MRI.

28. Paragraph 7: Please provide all documents underlying the statement that MRI has administered "millions of music licensing transactions for the public performance and reproduction of musical works on radio, television, cable and satellite broadcasting, and cable and satellite subscription music services."

29. Paragraph 7: Please provide all documents underlying the statement that "MRI currently administers more than \$50 million in music licensing royalties annually, on behalf of record companies, digital distribution services and broadcasters in the U.S."

30. Paragraph 9: Please provide all documents underlying the statement that "MRI also created and maintains "SONGDEX", a database of ownership and related business information for millions of songs and recordings. SONGDEX contains detailed worldwide copyright ownership information and license fee histories."

31. Paragraph 9: Please provide all documents underlying the statement that "SONGDEX is constantly updated to reflect these changes."

32. Paragraph 9: Please provide all documents underlying the statement that "[t]hrough its relationship with MRI, RLI has obtained the necessary infrastructure and management expertise to enable RLI to perform all the functions of a Designated Agent in collecting and distributing royalties under the statutory licenses," including, but not limited to, copies of all agreements reflecting the referenced relationship.

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# ARNOLD & PORTER

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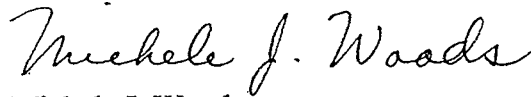
33. Paragraph 18: Please provide all documents underlying the statement that the designation of a Receiving Agent was "by agreement of RLI and SoundExchange."

34. Exhibit 4: Please provide all documents underlying the statement that "[Mr. Gertz] has most recently served as lead counsel for MRI in successful copyright office arbitration proceedings to establish competitive systems and entities for the collection and distribution of digital music licensing royalties to recording artists and record labels," including, without limitation, identifying the copyright office arbitration proceedings to which reference is made.

35. Exhibit 5: Please provide all documents underlying the letter in this exhibit, including, without limitation, a copy of the letter dated July 14, 2003 in which Mr. Gertz requested that "Music Choice provide RLI with copies of the statements of account and records of use."

36. Rebuttal Testimony of Ron Gertz, Paragraph 4: Please provide all documents underlying the statement that "MRI currently administers over 100 million dollars per year in music license royalties."

Sincerely,



Michele J. Woods

cc: Ronald A. Schechter, Esq.

**Before the  
UNITED STATES COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.**

In the Matter of	)	
	)	
	)	
Digital Performance Right in Sound	)	Docket No. 2002-1 CARP DTRA 3
Recordings Rate Adjustment	)	2000-2 CARP DTNSRA
	)	

**Response of Royalty Logic to  
First Set of Document Requests from SoundExchange**

Royalty Logic, Inc. ("RLI") hereby responds to SoundExchange, Inc.'s ("SoundExchange") request for production of documents.

RLI objects to the definition of "Documents" and to the scope of the requests insofar as they exceed the scope of discovery permitted under 37 C.F.R. § 251.45(c).

Subject to these objections, RLI responds as follows:

**Testimony of Lester Chambers**

1. Paragraph 2: Please provide all documents underlying the statement that Mr. Chambers is "a copyright owner of many sound recordings and a featured performer on many other sound recordings that have been performed by webcasters and other digital transmission services," including, without limitation, the titles, labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording which he owns or on which he is a featured performer.

**Response:** Mr. Chambers made this statement upon personal knowledge without reference to any underlying documents.

2. Paragraph 5: Please provide all documents underlying the statement that Mr. Chambers has not received royalties from digital performances of sound recordings "due in part to significant problems SoundExchange has encountered related to the administration of statutory license payments."

**Response:** Mr. Chambers made this statement upon personal knowledge without reference to any underlying documents.

3. Paragraph 6: Please provide all documents underlying the statement that Mr. Chambers has appointed RLI as his agent to obtain royalties due under statutory licenses.

**Response:** The document underlying Mr. Chambers's statement was Exhibit 1 of his direct testimony.

4. Paragraph 6: Please provide all documents underlying the statement that "other sound recording copyright owners and performers have designated RLI to administer their royalties."

**Response:** Mr. Chambers made this statement upon personal knowledge without reference to any underlying documents.

5. Paragraph 7: Please provide all documents underlying Mr. Chambers' statement that "RLI is authorized by me to collect statutory royalties on my behalf and represent me in direct and voluntary licensing transactions with webcasters and other transmission services."

**Response:** The document underlying Mr. Chambers's statement was Exhibit 1 of his direct testimony.

6. Paragraph 7: Please provide all documents underlying Mr. Chambers' statement that "I am not now or [sic] ever have been represented by SoundExchange . . ."

**Response:** Mr. Chambers made this statement upon personal knowledge without reference to any underlying documents.

7. Paragraph 8: Please provide all documents underlying the statement that "RLI is capable of performing these functions, will operate efficiently, will pay me in a timely and accurate manner, and will better represent my interests as a copyright owner and performing artist."

**Response:** Mr. Chambers made this statement upon personal knowledge and belief without reference to any underlying documents.

8. Paragraph 8: Please provide all documents underlying the statement that "the costs incurred by SoundExchange have been extremely and unnecessarily high and represent the interests of the major record labels rather than the interests of small copyright owners and performers."

**Response:** Mr. Chambers made this statement upon information and belief without reference to any underlying documents.

9. Paragraph 11: Please provide all documents underlying the statement that using "multiple agents . . . will create an expensive and burdensome administrative effort."



**Response:** Mr. Chambers made this statement upon information and belief without reference to any underlying documents.

10. Paragraph 13: Please provide all documents underlying the statement that having all royalty payments made to SoundExchange "presents too many opportunities for self-dealing."

**Response:** Mr. Chambers made this statement upon information and belief without reference to any underlying documents.

11. Paragraph 14: Please provide all documents underlying the statement that Mr. Chambers is "a copyright owner of sound recordings and a featured performing artist on sound recordings that have been performed by webcasting and other digital transmission services," including, without limitation, the titles, labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording which he owns or on which he is a featured performer.

**Response:** Mr. Chambers made this statement upon personal knowledge without reference to any underlying documents.

12. Paragraph 15: Please provide all documents underlying the statement that competition among Designated Agents "can only result in lower costs and more efficient operating and distribution practices by the competing Designated Agents."

**Response:** Mr. Chambers made this statement upon information and belief without reference to any underlying documents.

13. Exhibit 1: Please provide all documents underlying the RLI-Performer Client Agreement between RLI and Lester Chambers.

**Response:** The document underlying Mr. Chambers's statement was Exhibit 1 of his direct testimony.

14. Exhibit 1, First Whereas Clause: Please provide all documents underlying the statement that RLI "negotiates licenses and agrees to royalty rates and terms and conditions for the performance of sound recordings and the making of certain ephemeral recordings."

**Response:** The document underlying Mr. Chambers statement was Exhibit 1 of his direct testimony.

15. Exhibit 1, Second Whereas Clause: Please provide all documents underlying the statement that Mr. Chambers "is now . . . a featured or non-featured performer on certain sound recordings and may now . . . own or control certain sound recordings," including, without limitation, the titles, labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured

performer, and Mr. Chambers' share of artist royalties for each sound recording which he owns or on which he is a featured performer.

**Response:** The document underlying Mr. Chambers's statement was Exhibit 1 of his direct testimony.

16. Exhibit 1, Article 4.1.2: Please provide all documents underlying the statement that "Client's share shall be calculated by RLI based on a survey of music performances derived from information provided by licensees pursuant to copyright office regulations governing records of use of sound recordings, and such other information as RLI may deem relevant, pursuant to RLI's then current accounting and distribution practices . . . ."

**Response:** The document underlying Mr. Chambers's statement was Exhibit 1 of his direct testimony.

17. Exhibit 1, Article 4.2: Please provide all documents underlying the statement that "RLI may deduct from any of its receipts . . . a reasonable charge for administration."

**Response:** The document underlying Mr. Chambers's statement was Exhibit 1 of his direct testimony.

18. Exhibit 1, Article 7: Please provide all documents underlying the statement that "Client shall provide to RLI such accurate and timely information concerning Client's entitlement to royalties . . . including, without limitation, titles of sound recordings included in the Recordings, proof of rights with respect thereto, release dates, configuration types and royalty distribution information necessary to identify the correct Copyright Owner and Performer recipients for such payments," including, without limitation, any such information that has been provided by Mr. Chambers to RLI.

**Response:** The document underlying Mr. Chambers's statement was Exhibit 1 of his direct testimony.

19. Exhibit 2: Please provide all documents underlying the Notice included in this exhibit, including, without limitation, any documents demonstrating the interest of Lester Chambers in the litigation that is the subject of the Notice, and any Proof of Claim and Release (*see* Attachment B) filed by Lester Chambers.

**Response:** RLI objects to this request as exceeding the scope of permissible discovery under 37 C.F.R. § 251.45(c).

#### **Testimony of Ronald H. Gertz**

20. Paragraph 4: Please provide all documents underlying the statement that "RLI is an independent music copyright management organization established to provide

a fair return to sound recording copyright owners and performers for the licensing of their recordings in digital media.”

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

21. Paragraph 4: Please provide all documents underlying the statement that “RLI’s mission is to maximize license fee collections and royalty distributions on behalf of our affiliates, and to distribute such fees promptly and efficiently, at the lowest possible cost to our affiliates,” including, without limitation, schedules for any royalty distributions and the costs of those distributions.

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

22. Paragraph 6: Please provide all documents underlying the statement that RLI has “representation agreements with sound recording copyright owners who have appointed RLI as their agent to collect and distribute their royalties from both voluntary license agreements and transmissions authorized pursuant to the statutory licenses,” including, but not limited to, copies of all such representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits.

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

23. Paragraph 6: Please provide all documents underlying the statement that “RLI currently represents numerous copyright owners and performers whose works and performances have been performed by all statutory licensees including pre-existing subscription services, satellite digital audio radio services and eligible non-subscription and subscription webcasting services,” including, but not limited to, a list of those owners and performers and copies of all such representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits.

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

24. Paragraph 6: Please provide all documents underlying the statement that RLI affiliates are copyright owners of recorded performances by the performers listed in this paragraph, including, but not limited to, copies of all affiliation or representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits.

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

25. Paragraph 6: Please provide all documents underlying the statement that Mr. Gertz has had "conversations with many copyright owners, artists and their representatives regarding affiliation with RLI following an extension of its Designated Agent status in this proceeding."

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

26. Paragraph 7: Please provide all documents underlying the statement that "RLI was created and is currently controlled by the principals of Music Reports, Inc. ("MRI")," including, but not limited to, information as to the identity of those principals.

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

27. Paragraph 7: Please provide all documents underlying the statement that "RLI enjoys a long-term licensing relationship with MRI for certain critical database and data processing activities," including, but not limited to, any licensing agreements between RLI and MRI.

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

28. Paragraph 7: Please provide all documents underlying the statement that MRI has administered "millions of music licensing transactions for the public performance and reproduction of musical works on radio, television, cable and satellite broadcasting, and cable and satellite subscription music services."

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

29. Paragraph 7: Please provide all documents underlying the statement that "MRI currently administers more than \$50 million in music licensing royalties annually, on behalf of record companies, digital distribution services and broadcasters in the U.S."

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

30. Paragraph 9: Please provide all documents underlying the statement that "MRI also created and maintains "SONGDEX", a database of ownership and related business information for millions of songs and recordings. SONGDEX contains detailed worldwide copyright ownership information and license fee histories."

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

31. Paragraph 9: Please provide all documents underlying the statement that "SONGDEX is constantly updated to reflect these changes."

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

32. Paragraph 9: Please provide all documents underlying the statement that “[t]hrough its relationship with MRI, RLI has obtained the necessary infrastructure and management expertise to enable RLI to perform all the functions of a Designated Agent in collecting and distributing royalties under the statutory licenses,” including, but not limited to, copies of all agreements reflecting the referenced relationship.

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

33. Paragraph 18: Please provide all documents underlying the statement that the designation of a Receiving Agent was “by agreement of RLI and SoundExchange.”

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

34. Exhibit 4: Please provide all documents underlying the statement that “[Mr. Gertz] has most recently served as lead counsel for MRI in successful copyright office arbitration proceedings to establish competitive systems and entities for the collection and distribution of digital music licensing royalties to recording artists and record labels,” including, without limitation, identifying the copyright office arbitration proceedings to which reference is made.

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

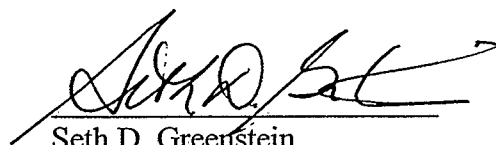
35. Exhibit 5: Please provide all documents underlying the letter in this exhibit, including, without limitation, a copy of the letter dated July 14, 2003 in which Mr. Gertz requested that “Music Choice provide RLI with copies of the statements of account and records of use.”

**Response:** RLI objects to this request as exceeding the scope of permissible discovery under 37 C.F.R. § 251.45(c).

36. Rebuttal Testimony of Ron Gertz, Paragraph 4: Please provide all documents underlying the statement that “MRI currently administers over 100 million dollars per year in music license royalties.”

**Response:** Mr. Gertz made this statement upon personal knowledge without reference to any underlying documents.

Date: October 23, 2003

A handwritten signature in black ink, appearing to read "Seth D. Greenstein", written over a horizontal line.

Seth D. Greenstein

Ann M. Brose

MCDERMOTT, WILL & EMERY

600 Thirteenth Street, NW

Washington, D.C. 20005-3096

(202) 756-8000 (voice)

(202) 756-8077 (facsimile)

sgreenstein@mwe.com

abrose@mwe.com

Counsel for Royalty Logic, Inc, as  
representative of Lester Chambers

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# ARNOLD & PORTER

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Michele J. Woods  
Michele\_Woods@aporter.com

202.942.5719  
202.942.5999 Fax

555 Twelfth Street, NW  
Washington, DC 20004-1206

October 31, 2003

## BY ELECTRONIC MAIL AND OVERNIGHT MAIL

Seth D. Greenstein, Esquire  
McDERMOTT, WILL & EMERY  
600 Thirteenth Street, N.W.  
Washington, D.C. 20005-3096

Re: Digital Performance Right in Sound Recordings and Ephemeral  
Recordings  
Docket Nos. 2002-1 CARP DTRA 3 & 2000-2 CARP DTNSRA

Dear Seth:

Pursuant to Section 251.45(c) of the rules of the Copyright Office, 37 C.F.R. § 251.45(c), on behalf of SoundExchange, Inc. ("SoundExchange"), we hereby request that you provide the following underlying documents related to the testimony that you have submitted in the above-referenced proceeding.

We note at the outset that RLI did not produce *a single document* in response to SoundExchange's initial discovery requests. This blatant failure to comply with the Copyright Office regulations requiring the production of underlying documents related to written direct testimony is very disturbing. We ask RLI to re-consider its response and to produce documents that underlie our initial requests. We will not repeat each of those requests here, but will instead focus on certain specific examples where the failure to produce underlying documents is particularly problematic. We nevertheless ask you again to review and produce documents in response to each one of our initial requests, even those that are not set out below. Given RLI's failure to produce any documents in the first round of discovery, SoundExchange reserves its right to make follow-up requests related to documents produced in response to these follow-up requests.

We also note that to the extent that RLI objected – we believe without any basis – to several of SoundExchange's document requests, RLI failed both to note whether any underlying documents exist and to produce those underlying documents that do exist. This time, we ask you to comply with our request to identify each basis for your objection in sufficient detail so as to permit adjudication of the validity of the objection, and produce any documents responsive to a portion of the request that is not objectionable. If you claim a document is "privileged," please state every fact supporting your claim of privilege.

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Seth D. Greenstein, Esquire

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Once again, please repeat on your response each of the requests below; we will provide you with an electronic copy of these requests. Please provide a separate written response to each request.

The term "underlying" has the same meaning as in Section 251.45(c) of the Copyright Office rules, 37 C.F.R. § 251.45(c), and includes, without limitation, all documents upon which the witness relied in making his statement and all documents which verify bottom-line numbers.

The term "document" includes any kind of printed, recorded, written, graphic, or photographic matter (including tape recordings or computer tapes or disks) of any kind or description, including information in an electronic form such as a computer database or web page. For the purposes of these requests, the terms "including", "includes" and "such as" are illustrative and not intended to be limiting.

In accordance with the procedural schedule issued by the Copyright Office on September 24, 2003, we expect to receive your responses to these follow-up requests by November 5, 2003. Please indicate on all documents produced the particular requests to which they are responsive. We reserve the right to supplement these requests if our motion to strike Tab 1 of RLI's direct case is not granted.

## Follow-up Requests

### Testimony of Lester Chambers

1. Paragraph 2 (Initial Request No. 1): This request asked that you "provide all documents underlying the statement that Mr. Chambers is 'a copyright owner of many sound recordings and a featured performer on many other sound recordings that have been performed by webcasters and other digital transmission services.'" It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording which he owns or on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were provided in response to this request. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and SoundExchange renews its request for the production of those documents.

2. Paragraph 6 (Initial Request No. 3): This request asked that you "provide all documents underlying the statement that Mr. Chambers has appointed RLI as his agent to obtain royalties due under statutory licenses." Exhibit 1 to Mr. Chambers' testimony was identified as responsive to this request. Exhibit 1 does not contain the "Exhibit A" that is included with one of the representation agreements that is Exhibit 1 to Mr. Gertz's testimony. Please indicate



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Seth D. Greenstein, Esquire

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whether an Exhibit A, or any other accompanying document or attachment, is a part of the Representation Agreement for Mr. Chambers, and if any such documents exist, please produce them. In addition, page 7 of Exhibit 1 is blank. Please indicate if there should be text on that page and if so, produce a copy of the page with that text.

3. Paragraph 14 (Initial Request No. 11): This request asked that you "provide all documents underlying the statement that Mr. Chambers is 'a copyright owner of sound recordings and a featured performing artist on sound recordings that have been performed by webcasting and other digital transmission services.'" It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers' share of ownership for each sound recording that has been performed which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording that has been performed which he owns or on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were provided in response to this request. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and SoundExchange renews its request for the production of those documents.

4. Exhibit 1 (Initial Request No. 13): This request asked that you "provide all documents underlying the RLI-Performer Client Agreement between RLI and Lester Chambers." Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* the Agreement at Exhibit 1 of the testimony of Lester Chambers.

5. Exhibit 1, First Whereas Clause (Initial Request No. 14): This request asked that you "provide all documents underlying the statement that RLI 'negotiates licenses and agrees to royalty rates and terms and conditions for the performance of sound recordings and the making of certain ephemeral recordings.'" Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* the First Whereas Clause in the Agreement at Exhibit 1 of the testimony of Lester Chambers.

6. Exhibit 1, Second Whereas Clause (Initial Request No. 15): This request asked that you "provide all documents underlying the statement that Mr. Chambers 'is now . . . a featured or non-featured performer on certain sound recordings and may now . . . own or control certain sound recordings.'" It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were provided in response to this request. Instead, your response indicates that the Agreement at Exhibit 1 underlies itself. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and

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Seth D. Greenstein, Esquire

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SoundExchange renews its request for the production of those documents that *underlie* this statement.

7. Exhibit 1, Article 4.1.2 (Initial Request No. 16): This request asked that you “provide all documents underlying the statement that ‘Client’s share shall be calculated by RLI based on a survey of music performances derived from information provided by licensees pursuant to copyright office regulations governing records of use of sound recordings, and such other information as RLI may deem relevant, pursuant to RLI’s then current accounting and distribution practices . . . .’” Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* Article 4.1.2 in the Agreement at Exhibit 1 of the testimony of Lester Chambers.

8. Exhibit 1, Article 4.2 (Initial Request No. 17): This request asked that you “provide all documents underlying the statement that ‘RLI may deduct from any of its receipts . . . a reasonable charge for administration.’” Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* Article 4.2 in the Agreement at Exhibit 1 of the testimony of Lester Chambers.

9. Exhibit 1, Article 7 (Initial Request No. 18): This request asked that you “provide all documents underlying the statement that ‘Client shall provide to RLI such accurate and timely information concerning Client’s entitlement to royalties . . . including, without limitation, titles of sound recordings included in the Recordings, proof of rights with respect thereto, release dates, configuration types and royalty distribution information necessary to identify the correct Copyright Owner and Performer recipients for such payments,’ including, without limitation, any such information that has been provided by Mr. Chambers to RLI.” Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* Article 7 in the Agreement at Exhibit 1 of the testimony of Lester Chambers, including, without limitation, any such information that has been provided by Mr. Chambers to RLI.

10. Exhibit 2 (Initial Request No. 19): This request asked that you “provide all documents underlying the Notice included in this exhibit.” It suggested that responsive underlying documents might include, without limitation, “any documents demonstrating the interest of Lester Chambers in the litigation that is the subject of the Notice, and any Proof of Claim and Release (*see* Attachment B) filed by Lester Chambers.” You objected to this request as exceeding the permissible scope of discovery, but failed to indicate the reasons for this objection and whether there are any documents responsive to any portion of the request that is not objectionable. SoundExchange believes that its request for documents underlying Exhibit 2 is a proper one, and renews its request for the production of those documents. To the extent RLI continues to object to the request, an explanation of the objection sufficient to allow the adjudication of the dispute should be provided, and all documents responsive to any portion of the request that is not objectionable should be produced.

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## Testimony of Ronald H. Gertz

11. Paragraph 6 (Initial Request No. 22): This request asked that you "provide all documents underlying the statement that RLI has 'representation agreements with sound recording copyright owners who have appointed RLI as their agent to collect and distribute their royalties from both voluntary license agreements and transmissions authorized pursuant to the statutory licenses,' including, but not limited to, copies of all such representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits." Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, including copies of the agreements to which it refers. Please produce those underlying documents. -

12. Paragraph 6 (Initial Request No. 23): This request asked that you "provide all documents underlying the statement that 'RLI currently represents numerous copyright owners and performers whose works and performances have been performed by all statutory licensees including pre-existing subscription services, satellite digital audio radio services and eligible non-subscription and subscription webcasting services.'" It suggested that responsive underlying documents might include, without limitation, "a list of those owners and performers and copies of all such representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits." Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement. Please produce those underlying documents.

13. Paragraph 6 (Initial Request No. 24): This request asked that you "provide all documents underlying the statement that RLI affiliates are copyright owners of recorded performances by the performers listed in this paragraph." It suggested that responsive underlying documents might include, without limitation, "copies of all affiliation or representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits." Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement. Please produce those underlying documents.

14. Paragraph 7 (Initial Request No. 27): This request asked that you "provide all documents underlying the statement that 'RLI enjoys a long-term licensing relationship with MRI for certain critical database and data processing activities,' including, but not limited to, any licensing agreements between RLI and MRI." Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which strongly suggests the existence of licensing agreements between RLI and MRI for certain database and data processing activities. Please produce those agreements and any other underlying documents.

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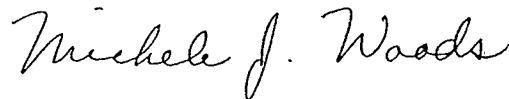
15. Paragraph 7 (Initial Request No. 29): This request asked you to "provide all documents underlying the statement that 'MRI currently administers more than \$50 million in music licensing royalties annually, on behalf of record companies, digital distribution services and broadcasters in the U.S.'" Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which contains a bottom-line number. Please produce those underlying documents.

16. Exhibit 5 (Initial Request No. 35): This request asked you to "provide all documents underlying the letter in this exhibit." It suggested that responsive underlying documents might include, without limitation, "a copy of the letter dated July 14, 2003 in which Mr. Gertz requested that 'Music Choice provide RLI with copies of the statements of account and records of use.'" You objected to this request as exceeding the permissible scope of discovery, but failed to indicate the reasons for this objection and whether there are any documents responsive to any portion of the request that is not objectionable. SoundExchange believes that its request for documents underlying Exhibit 5 is a proper one, and renews its request for the production of those documents. To the extent RLI continues to object to the request, an explanation of the objection sufficient to allow the adjudication of the dispute should be provided, and all documents responsive to any portion of the request that is not objectionable should be produced.

17. Rebuttal Testimony of Ron Gertz, Paragraph 4 (Initial Request No. 36): This request asked you to "provide all documents underlying the statement that 'MRI currently administers over 100 million dollars per year in music license royalties.'" Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which contains a bottom-line number. Please produce those underlying documents.

Please call me at 202-942-5719 if you would like to discuss these follow-up requests.

Sincerely,



Michele J. Woods

cc: Ronald A. Schechter, Esq.

Before the  
UNITED STATES COPYRIGHT OFFICE  
LIBRARY OF CONGRESS  
Washington, D.C.

\_\_\_\_\_  
In the Matter of )  
 )  
 )

Digital Performance Right in Sound )  
Recordings Rate Adjustment )  
\_\_\_\_\_ )

Docket No. 2002-1 CARP DTRA 3  
2000-2 CARP DTNSRA

**RESPONSE OF ROYALTY LOGIC, INC. TO SOUNDEXCHANGE  
REQUEST FOR FOLLOW-UP PRODUCTION OF DOCUMENTS**

Royalty Logic, Inc. ("RLI") hereby responds to SoundExchange, Inc.'s ("SoundExchange") follow-up request for production of documents. RLI incorporates by reference all prior responses and objections to these several requests, as if such responses and objections are set forth hereinbelow. RLI further reserves the right to reasonably amend and supplement these responses.

**Testimony of Lester Chambers**

1. Paragraph 2 (Initial Request No. 1): This request asked that you "provide all documents underlying the statement that Mr. Chambers is 'a copyright owner of many sound recordings and a featured performer on many other sound recordings that have been performed by webcasters and other digital transmission services.'" It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers' share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers' share of artist royalties for each sound recording which he owns or on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were provided in response to this request. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and SoundExchange renews its request for the production of those documents.

**Response:** The scope of discovery in CARP proceedings is intended only to require the production of documents that underlie the witness' actual statement, not to range beyond what the witness said or to encompass what the witness might have said. In this instance, the statement was made by Mr. Chambers upon his own personal knowledge and without reference to particular underlying documents. In any event, the documents produced by SoundExchange demonstrate that there are numerous public sources from which this information can separately be obtained. *See also* <http://www.lesterchambers.com>

2. Paragraph 6 (Initial Request No. 3): This request asked that you "provide all documents underlying the statement that Mr. Chambers has appointed RLI as his agent to obtain

royalties due under statutory licenses.” Exhibit 1 to Mr. Chambers’ testimony was identified as responsive to this request. Exhibit 1 does not contain the “Exhibit A” that is included with one of the representation agreements that is Exhibit 1 to Mr. Gertz’s testimony. Please indicate whether an Exhibit A, or any other accompanying document or attachment, is a part of the Representation Agreement for Mr. Chambers, and if any such documents exist, please produce them. In addition, page 7 of Exhibit 1 is blank. Please indicate if there should be text on that page and if so, produce a copy of the page with that text.

**Response:** The document provided as Exhibit 1 to the testimony of Lester Chambers is complete.

3. Paragraph 14 (Initial Request. No. 11): This request asked that you “provide all documents underlying the statement that Mr. Chambers is ‘a copyright owner of sound recordings and a featured performing artist on sound recordings that have been performed by webcasting and other digital transmission services.’” It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers’ share of ownership for each sound recording that has been performed which he owns or on which he is a featured performer, and Mr. Chambers’ share of artist royalties for each sound recording that has been performed which he owns or on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were provided in response to this request. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and SoundExchange renews its request for the production of those documents.

**Response:** RLI incorporates by reference herein its response to Follow-Up Request 1.

4. Exhibit 1 (Initial Request No. 13): This request asked that you “provide all documents underlying the RLI-Performer Client Agreement between RLI and Lester Chambers.” Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* the Agreement at Exhibit 1 of the testimony of Lester Chambers.

**Response:** There are no underlying documents other than the document itself.

5. Exhibit 1, First Whereas Clause (Initial Request No. 14): This request asked that you “provide all documents underlying the statement that RLI ‘negotiates licenses and agrees to royalty rates and terms and conditions for the performance of sound recordings and the making of certain ephemeral recordings.’” Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* the First Whereas Clause in the Agreement at Exhibit 1 of the testimony of Lester Chambers.

**Response:** There are no underlying documents other than the document itself.

6. Exhibit 1, Second Whereas Clause (Initial Request No. 15): This request asked that you “provide all documents underlying the statement that Mr. Chambers ‘is now . . . a featured or non-featured performer on certain sound recordings and may now . . . own or control certain sound recordings.’” It suggested that responsive underlying documents might indicate the titles of the sound recordings, the labels, Mr. Chambers’ share of ownership for each sound recording which he owns or on which he is a featured performer, and Mr. Chambers’ share of

artist royalties for each sound recording on which he is a featured performer, although it did not limit the possible categories of underlying documents to these categories. No documents were provided in response to this request. Instead, your response indicates that the Agreement at Exhibit 1 underlies itself. It is apparent that responsive documents about sound recordings in which Mr. Chambers has an interest as a copyright owner and/or performer exist, and SoundExchange renews its request for the production of those documents that *underlie* this statement.

**Response:** RLI incorporates herein by reference its response to Follow-Up Request 1.

7. Exhibit 1, Article 4.1.2 (Initial Request No. 16): This request asked that you “provide all documents underlying the statement that ‘Client’s share shall be calculated by RLI based on a survey of music performances derived from information provided by licensees pursuant to copyright office regulations governing records of use of sound recordings, and such other information as RLI may deem relevant, pursuant to RLI’s then current accounting and distribution practices . . . .’” Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* Article 4.1.2 in the Agreement at Exhibit 1 of the testimony of Lester Chambers.

**Response:** There are no underlying documents other than the document itself.

8. Exhibit 1, Article 4.2 (Initial Request No. 17): This request asked that you “provide all documents underlying the statement that ‘RLI may deduct from any of its receipts . . . a reasonable charge for administration.’” Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* Article 4.2 in the Agreement at Exhibit 1 of the testimony of Lester Chambers.

**Response:** There are no underlying documents other than the document itself.

9. Exhibit 1, Article 7 (Initial Request No. 18): This request asked that you “provide all documents underlying the statement that ‘Client shall provide to RLI such accurate and timely information concerning Client’s entitlement to royalties . . . including, without limitation, titles of sound recordings included in the Recordings, proof of rights with respect thereto, release dates, configuration types and royalty distribution information necessary to identify the correct Copyright Owner and Performer recipients for such payments,’ including, without limitation, any such information that has been provided by Mr. Chambers to RLI.” Your response indicates that the Agreement at Exhibit 1 underlies itself. Please provide any and all documents *underlying* Article 7 in the Agreement at Exhibit 1 of the testimony of Lester Chambers, including, without limitation, any such information that has been provided by Mr. Chambers to RLI.

**Response:** There are no underlying documents other than the document itself.

10. Exhibit 2 (Initial Request No. 19): This request asked that you “provide all documents underlying the Notice included in this exhibit.” It suggested that responsive underlying documents might include, without limitation, “any documents demonstrating the interest of Lester Chambers in the litigation that is the subject of the Notice, and any Proof of Claim and Release (*see* Attachment B) filed by Lester Chambers.” You objected to this request as exceeding the permissible scope of discovery, but failed to indicate the reasons for this

objection and whether there are any documents responsive to any portion of the request that is not objectionable. SoundExchange believes that its request for documents underlying Exhibit 2 is a proper one, and renews its request for the production of those documents. To the extent RLI continues to object to the request, an explanation of the objection sufficient to allow the adjudication of the dispute should be provided, and all documents responsive to any portion of the request that is not objectionable should be produced.

**Response:** Exhibit 2 is a Notice of Pendency of Class Action issued by the United States District Court, Northern District of Georgia. To the extent that the request seeks documents underlying this specific document, RLI does not have documents underlying the creation of a document by that Court. To the extent that the requests purports to seek production of Mr. Chambers's case file relating to that civil action, such documents are not underlying documents within the meaning of §251.45(c); moreover, the request is vague, unduly broad, overly burdensome, vexatious and harassing.

### **Testimony of Ronald H. Gertz**

11. Paragraph 6 (Initial Request No. 22): This request asked that you "provide all documents underlying the statement that RLI has 'representation agreements with sound recording copyright owners who have appointed RLI as their agent to collect and distribute their royalties from both voluntary license agreements and transmissions authorized pursuant to the statutory licenses,' including, but not limited to, copies of all such representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits." Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, including copies of the agreements to which it refers. Please produce those underlying documents.

**Response:** The specific documents underlying the referenced statement were produced as Exhibit 1 to the testimony of Mr. Chambers, and as Exhibits 1-3 to the testimony of Mr. Gertz.

12. Paragraph 6 (Initial Request No. 23): This request asked that you "provide all documents underlying the statement that 'RLI currently represents numerous copyright owners and performers whose works and performances have been performed by all statutory licensees including pre-existing subscription services, satellite digital audio radio services and eligible non-subscription and subscription webcasting services.'" It suggested that responsive underlying documents might include, without limitation, "a list of those owners and performers and copies of all such representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits." Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement. Please produce those underlying documents.

**Response:** RLI incorporates herein by reference its response to Follow-Up Request 11.



13. Paragraph 6 (Initial Request No. 24): This request asked that you "provide all documents underlying the statement that RLI affiliates are copyright owners of recorded performances by the performers listed in this paragraph." It suggested that responsive underlying documents might include, without limitation, "copies of all affiliation or representation agreements to the extent that they are not already attached to the direct testimony of Lester Chambers or Ronald Gertz as exhibits." Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement. Please produce those underlying documents.

**Response:** RLI incorporates herein by reference its response to Follow-Up Request 11.

14. Paragraph 7 (Initial Request No. 27): This request asked that you "provide all documents underlying the statement that 'RLI enjoys a long-term licensing relationship with MRI for certain critical database and data processing activities,' including, but not limited to, any licensing agreements between RLI and MRI." Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which strongly suggests the existence of licensing agreements between RLI and MRI for certain database and data processing activities. Please produce those agreements and any other underlying documents.

**Response:** The statement was made solely upon direct personal knowledge, without reference to any underlying document.

15. Paragraph 7 (Initial Request No. 29): This request asked you to "provide all documents underlying the statement that 'MRI currently administers more than \$50 million in music licensing royalties annually, on behalf of record companies, digital distribution services and broadcasters in the U.S.'" Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which contains a bottom-line number. Please produce those underlying documents.

**Response:** The statement was made by Mr. Gertz upon his personal knowledge and information, and not by reference to underlying documents.

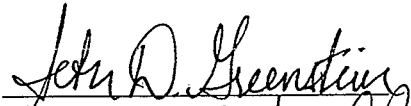
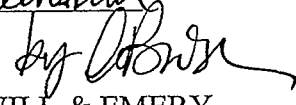
16. Exhibit 5 (Initial Request No. 35): This request asked you to "provide all documents underlying the letter in this exhibit." It suggested that responsive underlying documents might include, without limitation, "a copy of the letter dated July 14, 2003 in which Mr. Gertz requested that 'Music Choice provide RLI with copies of the statements of account and records of use.'" You objected to this request as exceeding the permissible scope of discovery, but failed to indicate the reasons for this objection and whether there are any documents responsive to any portion of the request that is not objectionable. SoundExchange believes that its request for documents underlying Exhibit 5 is a proper one, and renews its request for the production of those documents. To the extent RLI continues to object to the request, an explanation of the objection sufficient to allow the adjudication of the dispute should be provided, and all documents responsive to any portion of the request that is not objectionable should be produced.

**Response:** Responsive documents will be produced.

17. Rebuttal Testimony of Ron Gertz, Paragraph 4 (Initial Request No. 36): This request asked you to "provide all documents underlying the statement that 'MRI currently administers over 100 million dollars per year in music license royalties.'" Your response that this statement was based upon the personal knowledge of Mr. Gertz is non-responsive to the request for underlying documents related to the statement, which contains a bottom-line number. Please produce those underlying documents.

**Response:** The statement was made by Mr. Gertz upon his personal knowledge and information, and not by reference to underlying documents.

Date: November 5, 2003

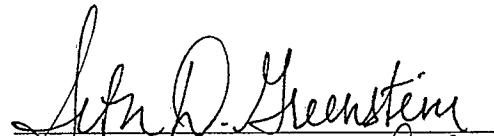
  
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Counsel for Royalty Logic, Inc, as  
representative of Lester Chambers

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Response of Royalty Logic, Inc. to SoundExchange  
Request for Follow-Up Production of Documents has been served on November 5, 2003, by  
overnight delivery, to:

Michele Woods  
Arnold and Porter  
555 Twelfth Street NW  
Washington, DC 20004-1206  
**Counsel for SoundExchange**

  
Seth D. Greenstein 